

School-Based Decision Making Technical Assistance



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School-Based Decision Making (SBDM) Guidance 2005

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INTRODUCTION—KRS 160.345

This chapter contains the text of the current SBDM statute, KRS 160.345. The actual text of the law is located in the gray blocks throughout the chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and followed by implications. **A full copy of the statute is available online at <http://162.114.4.13/krs/160-00/345.pdf>.** Further information on how the law can be implemented is included in specific chapters throughout the manual.

DEFINITION OF RELATIVE

An Attorney General's Opinion [OAG 90-102] says that "relative" as used in this section should have the same definition found in KRS 160.180 and KRS 160.380 that applies to school boards, and includes "*father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law and daughter-in-law.*"

Statutory Requirement:

⇒ If the parent who wants to serve on the school council is related to a central office employee in one of the ways listed above, he or she may not serve.

DEFINITION OF MINORITY FOR THE PURPOSE OF THIS SECTION - SECTION (1)(a)

For the purpose of this section: "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific Islander; or other ethnic group underrepresented in the school.

Statutory Requirement:

⇒ In the SBDM statute, when the term "minority" is used, it refers to all the groups included in this definition.

DEFINITION OF “SCHOOL” FOR THE PURPOSE OF THIS SECTION - SECTION (1)(b)

“School” means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term “school” does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;
2. Instructional programs operated in institutions or schools outside of the district; or
3. Alternative schools designed to provide services to at-risk populations with unique needs.

Statutory Requirement:

- ⇒ All schools not excluded by this language are required to implement school-based decision-making.
- ⇒ Schools that fall under one of these three exclusions are exempt from the requirement to implement school-based decision-making.

Implications

If the faculty and parents at any of these exempt schools want to participate in school-based decision making, they need to consult their superintendent and local board policy to determine whether or how they may participate.

DEFINITION OF “TEACHER” FOR THE PURPOSE OF THIS SECTION - SECTION (1)(c)

"Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers.

Statutory Requirement:

⇒ In this statute, when the term "teacher" is used, it refers to all certified staff in the school, including itinerant teachers, part time teachers, counselors and librarians (with the exception of principals, assistant principals, and head teachers) regardless of the amount of time they are assigned to the school.

DEFINITION OF “PARENT” FOR THE PURPOSE OF THIS SECTION - SECTION (1)(d)

“Parent” means:

1. A parent, stepparent, or foster parent of a student; or
2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

Statutory Requirement:

⇒ In this statute, when the term “parent” is used it includes parents of students currently enrolled or pre-registered to attend a school and who meet the requirements in this definition.

DISTRICT POLICES AMENDED TO ALLOW SCHOOL STAFF TO SHARE DECISIONS - SECTION (2)

By January 1, 1991, each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board.

Statutory Requirement:

- ⇒ Local school boards were required to renew and, if appropriate, change their policies so that certified staff members of schools in their districts could be involved in making decisions as designated in KRS 160.340.
- ⇒ Local boards may require school councils to give an annual progress report in a public meeting that will describe their school's progress toward meeting the goals for students in KRS 158.6451 and progress toward meeting goals established for the district by the local board.

Implications:

The local board may set goals for the district in areas found in Section 3 of this statute, and in other areas, such as technology, where the district is required to submit a district plan to the state that must include district goals. Local boards may require school councils to report on the school's progress toward these goals, but this does not prohibit a school council from establishing school goals through their school planning process and focusing their efforts on these. The language in this section is a means by which local boards may require school councils to participate in an annual report to the board on the progress made by their individual school.

Local school boards have found that in addressing this requirement they have sometimes needed to amend their policies relative to transportation, student discipline, limitations or restrictions on use of school facilities, personnel, selection of textbooks and instructional materials, finance and purchasing, and policies dealing with school-based decision making.

The focus of school councils is for children to meet the educational goals and capacities established in **KRS 158.645** and **158.6451**. The text of these statutes is available online.

KRS 158.6451. View Legislative Declaration on Goals for the Commonwealth's Schools -- Modern Curriculum Framework online: <http://162.114.4.13/krs/158-00/6451.pdf>

KRS 158.645. View Capacities Required of Students in Public Education System online: <http://162.114.4.13/krs/158-00/645.pdf>

From these goals the academic expectations for Kentucky students have been framed. Schools are assessed on how well their students meet these expectations. If school boards, school councils, parents, and all personnel involved with students work together toward these goals, school and district policies will evolve and change as needs of students are identified.

SCHOOL COUNCIL MEMBERSHIP, RELATIVES, CONFLICT OF INTEREST - SECTION (2)(a)

The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b) 2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees.

Statutory Requirement:

- ⇒ The administrative structure for school councils required in this section of the statute includes two parents, three teachers, and the principal or administrator of the school.
- ⇒ This administrative structure may increase proportionately without Kentucky Board of Education (KBE) approval in schools with more than one administrator to a 4-6-2 or a 6-9-3 (or larger) model.
- ⇒ Parents elected to the council may not be employees of or be related to an employee of the school where they will serve, or be employed in the district administrative offices.
- ⇒ None of the council members may have a conflict of interest as listed in KRS Chapter 45A, the section of Kentucky law that deals with "Conflicts of Interest of Public Officers and Employees," with the exception of the salary paid to district employees.

Implications:

If a parent is employed in the school district, they may be elected to serve as a parent council member as long as their workstation is not located at that school or at the district administrative offices. Local board members and their spouses may not serve as parent members of school councils.

TERMS OF OFFICE, ELECTIONS - SECTION (2)(b) 1.

The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students pre-registered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.

Statutory Requirement:

- ⇒ Teacher council members must be elected by a simple majority (more than one-half of the number of teachers eligible to vote in teacher elections at their school in an election conducted by the teachers).
- ⇒ The law does not require a majority vote for election of a parent member. A simple plurality is all that is necessary.
- ⇒ Parents of students pre-registered to attend or who will be attending the school during the term for which the election is being conducted must elect parents.
- ⇒ The parent election must be conducted by the parent and teacher organization of the school if one exists.
- ⇒ Parent council members may be elected by majority or plurality, as per the parent-teacher organization by-laws.
- ⇒ If there is no parent and teacher organization, the election is conducted by the largest group of parents formed for the purpose of electing parent representatives to the school council. The principal may not conduct the election.
- ⇒ School councils should not establish teacher and parent election procedures in their by-laws. Teachers must establish their own election procedures and parent-teacher organizations must establish their own election procedures.

- ⇒ A school council elected for the current term may not adopt a policy setting a different term for themselves, but may adopt a policy setting different terms of office for parent and teacher members to be elected for the next term and beyond.
- ⇒ Parent and teacher members may be re-elected to consecutive terms as established in council policy for so long as they are a member of the constituency group, and in the case of a parent, as long as they have a child pre-registered to attend the school.

Implications:

Itinerant teachers and part time teachers have a full vote in all schools where they are assigned, and may serve on the school council at any school where they are assigned, if elected. Certified staff working in classified positions in schools are not eligible to serve on the school council where they are employed. Teachers are responsible for conducting elections each term and reporting to the principal the results of their election. Parent-teacher organizations are responsible for conducting their own elections each term and reporting to the principal the results of their election.

REQUIRED MINORITY MEMBERSHIP ON THE SCHOOL COUNCIL SECTION (2)(b)2

School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member.

Statutory Requirement:

- ⇒ A school with a combined minority population of eight percent or more must have at least one minority member on the council.
- ⇒ Combined minority population is determined by the school's preceding October enrollment figure.

Implications:

If there is no minority member on the school council, the principal will begin the process for electing a minority parent in a timely manner. (The percentage of minority students in a school

may be determined from information compiled on the School Data Forms. Students' ethnicity is voluntarily reported, by parents, to the school.)

SPECIAL ELECTION OF A MINORITY PARENT MEMBER SECTION (2)(b)2.a

... If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following: organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and...

Statutory Requirement:

- ⇒ The principal must organize the special election for an additional parent member if no minority is elected to a seat on the council through the initial election process and the principal is not a minority member.
- ⇒ The principal is responsible for calling for nominations and notifying all parents of the date, time, and location of the election of their parent school council representative.
- ⇒ All parents get to vote regardless of ethnicity.
- ⇒ The parent elected must be a minority. The term "minority" is defined in Section 1 of KRS 160.345.

Implications:

Organizing the election may include the principal meeting with the parents at the school to inform them of the opportunity to nominate minority parents. A "minority parent" elected to the council through this process must qualify under the definition of "minority" and "parent" in KRS 160.345.

SELECTION OF A MINORITY TEACHER MEMBER - SECTION (2)(b)2.b

... Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty.

Statutory Requirement:

- ⇒ If a minority teacher must be elected to the school council, then all teachers must be given the opportunity to select a minority teacher to serve on the school council.
- ⇒ An additional election will be necessary if more than one minority teacher wishes to serve.
- ⇒ If there are no minority teachers who are members of the faculty, the school faculty will elect, by majority, an additional teacher member to the school council.
- ⇒ Term limitations do not apply to a minority teacher council member who is the only minority teacher on the school's faculty.

Implications:

If there are minority teachers on the faculty, but none are willing to serve on the council, the seat remains vacant until a minority teacher wishes to serve.

**SCHOOL COUNCIL RESPONSIBILITY, PRINCIPAL AND STAFF ADMINISTER
COUNCIL POLICIES - SECTION 2(c)1**

The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with

the assistance of the total school staff shall administer the policies established by the school council and the local board.

Statutory Requirement:

⇒ The primary role of the principal or head teacher is established in this section as administrator and instructional leader.

Implications:

The principal administers the policies of the council and school board with the assistance of the total school staff, giving the principal and elected teachers dual roles of creating and administering school council policy, and giving all staff in the school responsibility to assist the principal in accomplishing school council and school board initiatives.

**SCHOOL COUNCIL POLICY ON COMMITTEES
SECTION 2(c)2**

If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection.

Statutory Requirement:

⇒ If school councils decide to establish committees, their policies shall enable, help, and encourage all interested persons, including parents and classified employees, to become members of committees.

⇒ School council policy must include the number of school council committees, their area of authority or responsibility, membership of the committees, and how people will be selected for committee membership.

SCHOOL COUNCIL AND COMMITTEE MEETINGS, FORMATION OF SCHOOL COUNCILS - SECTION (2)(d)

The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy.

Statutory Requirement:

⇒ School councils and committees determine their own meeting schedules and set their own agendas. The school council and/or committee should agree upon meeting schedules and agendas.

⇒ Any issue regarding formation of a school council that is not set by law may be set by the local board.

Implications:

Schools should check their local board policy for any details about formation of their council not addressed in Section (2) of this law. Issues related to school council operation, after initial formation, should be addressed in school council by-laws (operational policies).

SCHOOL COUNCIL MEETINGS OPEN TO THE PUBLIC - SECTION 2(e)

The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply. (You can review the exceptions to the open meetings law in KRS 61.810 online at <http://162.114.4.13/krs/061-00/810.pdf>)

Statutory Requirement:

School councils and their committees must have meetings at times and places convenient for the public, and they must abide by the Open Meetings Law. Requirements can be summarized as follows:

- ⇒ The schedule for regular meetings must be made available to the public.
- ⇒ For special meetings, members must receive at least 24 hours written notice of the date, time, place, and agenda.
- ⇒ For special meetings, media must receive at least 24 hours written notice of the date, time, place, and agenda, if they have requested such notice in writing.
- ⇒ For special meetings, written notice of the date, time, place, and agenda must be posted at the school at least 24 hours before the meeting.
- ⇒ School councils should make every effort to inform their community of meetings, providing as much advance notice as possible, and no less notice than that which is required by law.

Implications:

School council members are required to be informed about the open meetings law. Effective June 2005, all superintendents were required, per KRS 160.395, to disseminate information about the open meetings law to all school council members. Each school council member must sign that they have received the information and understand their duty under the open meetings law. The triggering event for distribution of open records materials is the election of a new member to a school council. Those who are experienced do not need to re-sign.

This statute can be found in its entirety at <http://www.lrc.ky.gov/KRS/160-00/395.PDF>. The documents distributed by superintendents can be found at

<http://www.education.ky.gov/KDE/Administrative+Resources/School+Based+Decision+Making/Technical+Assistance/SBDM+Technical+Assistance+Download+Documents.htm>.

COUNCIL DECIDES THE NUMBER OF PERSONS TO BE EMPLOYED IN EACH JOB CLASSIFICATION AT THE SCHOOL - SECTION 2(f)

After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make

personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals.

Statutory Requirement:

- ⇒ School councils must determine annually the number of staff needed in each job classification, within allocated funds, and have this decision reflected in their council minutes.
- ⇒ School councils shall not recommend transfers or dismissals.

Implications:

702 KAR 3:246 specifies that by March 1 of each year, each school council will be notified by their local school board of the school's allocation for the next budget year. The allocation covers instructional materials, supplies, equipment and travel, professional development, and school staff for the coming school year. Staffing levels are determined by state law and school board policy. The school must receive from the school board allocation the number of staff it needs to at least meet the proper maximum class size required by KRS 157.360. Although school councils are exempt from cap size requirements by statute, they must still receive funding that will allow them to staff their school to meet cap size requirements if they choose to do so. For more information on cap size issues, go to <http://www.lrc.state.ky.us/KRS/157-00/360.PDF>

After the school council receives notification of its allocation for the next school year, the school council has some decisions to make. If there are vacancies, they decide whether to fill the position with a person from the same job class, or to employ someone in a different job class for which the school board will create a new position. For example, instead of filling a teaching position vacated by a retiring teacher with another teacher, the council may wish to hire a counselor to meet the needs of students. They also may opt not to fill the vacancy and use the money for other initiatives in the school. If a school council decides not to fill the position and requests the funds instead, it will receive 95 percent of the district's average 185-day certified salary for non-categorical staff in the previous year budget for other initiatives. This decision has to be made each year and is only in effect for one year. School councils may not make decisions on vacancies that occur before the council is formed, and they shall not recommend transfers or dismissals. The text of the regulation that contains the school council funding formula is available at: <http://162.114.4.13/kar/702/003/246.htm>

SCHOOL COUNCIL ALLOCATION - SECTION 2(g)

The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment.

Statutory Requirement:

⇒ School councils decide which textbooks, instructional materials, and student support services to purchase for students. School councils must consult with the school's media librarian when considering their instructional budget, but the final decision relative to school media budget and expenditure is the council's.

Implications:

If the school council decides that purchasing instructional materials would benefit students more than purchasing additional textbooks, "textbook" money may be used to purchase additional instructional materials for the school. School-based student support services include efforts of the school that help students become ready to learn. These services can include, but are not limited to, counseling, hearing/vision testing, screening students for special learning needs, and tutoring. The school council may determine the level of student support services and provide for the services with money from the allocation or ask the district for additional dollars to meet student needs. School councils should also work cooperatively with the Family Resource or Youth Service Center staff serving their students to help provide student support services.

CONSULTATION ON PERSONNEL AND SELECTION OF THE PRINCIPAL WHEN THERE IS A VACANCY - SECTION 2(h)

From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)(10) of this section. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons

recommended by the local superintendent. When a vacancy in the principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available.

Statutory Requirement:

- ⇒ School councils select the principal from a list of qualified applicants provided by the superintendent.
- ⇒ The principal fills all other school-based vacancies from a list of qualified candidates submitted by the superintendent, after consultation with the school council. Unless the vacancy to be filled is that of principal, the principal has the final decision on who is to fill vacant positions in the school.
- ⇒ If the school district and the teachers in a school have a bargained contract that defines how vacant teaching positions can be filled by transfer, the school council and principal must comply with terms of that contract.
- ⇒ School councils must select a trainer and receive training in recruitment and interviewing techniques prior to selecting a principal. Training and trainer information is available from the Kentucky Department of Education web page.

Implications for Filling Vacancies for Principal:

(Ref: Young v. Hamilton, 2003-SC-0397-I and Back v. Robinson-2003-SC-0462-DG, rendered April 22, 2004, KY Supreme Court decisions on selection of principals.)

On April 22, 2004, the Kentucky Supreme Court rendered an opinion affirming the Kentucky Court of Appeals in the above styled cases on the issue of whether KRS 160.345(2)(h) requires a site-based decision making council to select a school principal from among those applicants whom the local superintendent recommends or whether the council has the right to consider all applicants meeting statutory requirements (e.g., appropriately certified and criminal records check). The Court concluded that the council has the right to consider all qualified applicants meeting statutory requirements (e.g., appropriately certified and criminal records check), and not just the ones recommended by the superintendent.

Principal selection now occurs through a two-tiered process in that, after considering the applicants recommended by the superintendent, the council may ask for the remaining legally qualified applicants. The rationale given by the Court for the conclusion is that the Kentucky Education Reform Act stressed the importance of decentralization of school management, "to remove opportunities for nepotism and political influence, and to disperse decision making authority among several interested parties." The Court reasoned that this is to reflect the importance of shared responsibility for purposes of accountability in creating an efficient system. The Court notes that the council right of selection is tempered by the council's lack of authority to do transfers or dismissals. The balance of authority is intended to create, the Court says, a meaningful dialogue between the council and superintendent.

This case decision is now the law of the Commonwealth. Therefore, if the school council asks for additional applicants, the superintendent must continue to send more applicants until the pool of qualified applicants has been exhausted. During the entire process, it is important to maintain a positive dialog between the school council and the superintendent.

Implications for Filling Vacancies for Other Positions:

Certified and classified school-based vacancies that occur in an SBDM school, including but not limited to the positions of teacher, special education teacher, counselor, assistant principal, school secretary, bookkeeper, custodian and instructional aide, require consultation with the council, as per council policy, before the principal makes a final selection. For the purpose of filling vacancies, itinerant positions are considered district-wide positions and are filled by the superintendent. These itinerant positions are not required to be included in the school's allocation received on March 1.

"Qualified" applicants for a principal's position include proper certification, and a clear criminal records check.

SCHOOL COUNCILS SHALL ADOPT POLICY IN THESE ADDITIONAL AREAS- SECTION 2(i)(1-10)

The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;

2. Assignment of all instructional and non-instructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques as part of the comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision; and
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal.
10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications and review of references. Procedures shall address situations in which members of the council are not available for consultation.

Statutory Requirement:

- ⇒ School councils **must** have a policy in each of the areas listed above.
- ⇒ Section (2)(i)(4) allows councils to make policy on the school day and week schedule, within the beginning and ending times of the school day and year set by the local board.
- ⇒ Section (2)(i)(9) requires that council policies concerning alignment with state standards, technology utilization, and program appraisal be within local board policy.
- ⇒ Policies relative to discipline and classroom management must be part of the comprehensive school safety plan, and must be consistent with the local board's code of student conduct.
- ⇒ Policies relative to student assignment apply to classes and programs within the school.

Implications:

In SBDM schools, the principal is responsible for seeing that school council policy is administered, along with the assistance of the total school staff. In this subsection of the statute, the council is given authority to make "change" policies for its school in very specific and important areas. A school council may delegate the responsibility for a policy area given to it by law, but the council is still ultimately responsible for the area. In accordance with the December 1994 Supreme Court ruling on the *Bushee vs. Boone County Board of Education* case, "the legislature did not delegate authority to the local boards of education to require approval of council actions." School councils and local school board authority over specific issues are sometimes independent of each other and oftentimes complementary.

According to the Kentucky Supreme Court in its 1994 decision on *Bushee v. Boone County Board of Education*:

"...each participating group in the common school system has been given its own independent sphere of responsibility...The local boards are responsible for the administrative functions of allocating funding, managing school property, appointing the superintendent, and fixing the compensation of employees. The councils are responsible for the site based issues, including but not limited to determining curriculum, planning instructional practices, selecting and implementing discipline techniques, determining the composition of the staff at the school, and choosing textbooks and instructional materials."

While school councils do not have absolute and unchecked authority, they do have authority to make policy to change schools in significant areas. Council authority is retained and exercised at the school level, with oversight by and assistance from the school district. Prior to establishing policies, the school council should collect data and information from its community.

A school council can make its own school policy to determine how time is used during the day, what is taught to students in its school, and how teachers teach. In these and other areas, those who work most closely with the students can change the school structure to ensure the students' success.

For specific guidance in writing policy in these and other areas, please visit the Kentucky Department of Education web page at the *SBDM Technical Assistance* link: <http://www.education.ky.gov/KDE/Administrative+Resources/School+Based+Decision+Making/Technical+Assistance/default.htm>

ANNUAL SCHOOL COUNCIL REVIEW OF STUDENT PERFORMANCE - SECTION 2(j)

Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal; free and reduced price lunch program. After completing the review of the data, each school council with the involvement of parents, faculty and staff shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.645 (1)(b) by April 1 of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.

Statutory Requirement:

- ⇒ School councils must complete a detailed review of their school's student performance data each year.
- ⇒ The data must include, but not be limited to, information on the performance of students disaggregated by race, gender, disability, and participation in the federal; free and reduced price lunch program.
- ⇒ School councils must adopt a plan by April 1 of each year, with the involvement of parents, faculty, and staff that will establish specific goals for ensuring each student's progress.

SCHOOL BUDGET AND ADMINISTRATION IN SBDM SCHOOLS SECTION 3(a)

The policy adopted by the local board to implement school-based decision-making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

Statutory Requirement:

⇒ School boards have policies in place that describe how funds will be allocated to school councils, and what fiscal procedures will be used in the district.

⇒ Board policies describe how school councils are involved in decisions regarding discretionary funds and for how funds for school building maintenance, supplies and equipment will be handled.

⇒ Board policies must describe a procedure for reimbursing council members for training and other expenses related to their duties as council members.

ASSESSMENT AND REPORTING OF STUDENT PROGRESS

SECTION 3(b)

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

Statutory Requirement:

⇒ Local school boards will have a policy for school councils to follow regarding how individual student progress will be assessed and what testing and reporting methods will be used in the district.

Implications:

The local board also may choose the format and frequency (usually a report card) for reporting students' progress to parents, the community, and the state within statutory and regulatory requirements. For example, the regulation containing Kentucky primary program guidelines requires qualitative reporting of student progress to parents four times during the school year (704 KAR 3:440 - <http://www.lrc.state.ky.us/kar/704/003/440.htm>).

GUIDELINES FOR SCHOOL IMPROVEMENT PLANS - SECTION 3(c)

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

Statutory Requirement:

⇒ Local school boards must have a policy for school councils to follow regarding the format to use for planning, and how school plans are related to district plans.

Implications:

According to the Kentucky Supreme Court ruling in *Bushee v. Boone County Board of Education*, local boards may review, not approve, school council-developed improvement plans. Exceptions include:

- Schools designated as Assistance Level 3 by the Commonwealth Accountability Testing System (CATS),
- Schools that do not meet Annual Yearly Progress under the No Child Left Behind Act, and
- Schools that do not close achievement gaps and have to implement changes required in their plans under KRS 158.649.

School boards may require councils to plan for more than one year at a time. All guidelines for school and district plans in regulation and in statute must be included.

*The Department of Education, in cooperation with local district educators and parents, has developed the Kentucky Improvement Planning Process, and **recommends** its use in schools and districts to facilitate planning. Technical assistance is available from the Kentucky Department of Education. More information about Comprehensive Improvement Planning is available from the Kentucky Department of Education web page at <http://www.education.ky.gov/KDE/Administrative+Resources/School+Improvement/Comprehensive+Improvement+Planning/KDE+Planning+Tools+for+Schools+and+Districts.htm>*

GUIDELINES FOR SCHOOL PROFESSIONAL DEVELOPMENT PLANS - SECTION 3(d)

(d) Professional development plans developed pursuant to KRS 156.095;

Statutory Requirement:

- ⇒ Local school boards are to develop a policy for professional development.
- ⇒ School and district plans for professional development are included in the Comprehensive School or District Improvement Plan.
- ⇒ KRS 160.345 (8) requires that school councils receive an allocation for professional development and that they plan professional development with the district's coordinator and other school councils. School councils must determine the content of at least three of the four professional development days in each school district calendar.

GUIDELINES FOR SCHOOL COUNCILS ON PARENT, CITIZEN AND COMMUNITY PARTICIPATION - SECTION 3(e)

(e) Parents, citizen, and community participation including the relationship of the council with other groups;

Statutory Requirement:

⇒ Local school boards are to develop a policy for school councils to follow on how parents and community members participate in school council initiatives and activities.

SCHOOL COUNCILS AND COLLABORATION

SECTION 3(f)

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

Statutory Requirement:

⇒ Local school boards are to develop a policy for the school council to follow on how personnel, parents, and students cooperate and collaborate within the school district and with other districts.

Implications:

Many districts have dealt with this issue by creating a "council of councils" to facilitate cooperation and communication. School boards also may have a policy for councils to follow on how to collaborate with public and private agencies, such as social service agencies, private industry and local businesses, chambers of commerce, local universities and colleges, and health care organizations.

WAIVERS OF DISTRICT POLICIES FOR SCHOOL COUNCILS

SECTION 3(g)

(g) Requirements for waiver of district policies;

Statutory Requirement:

⇒ Local school boards are to have a policy in place for councils to follow when they need a waiver of local board policy.

Implications:

The council does not need to seek a waiver if the action it plans is the adoption of a policy under (2)(i)(1-10), (2)(c), (2)(f), (2)(g), or (2)(h). Waivers are needed whenever the council moves into other areas. The local board does not have to automatically approve these requests, and councils are encouraged to do research, plan, and gain support (including funding possibilities, if necessary) for projects before approaching the school board with the request. This will assist the school board in clearly understanding what the council wants to do, and give board members information they may need in making a decision.

SCHOOL COUNCIL RECORD KEEPING SECTION 3(h)

(h) Requirements for record keeping by the school council; and

Statutory Requirement:

⇒ Local boards are to have a policy in place for councils to follow regarding how and where to keep council records.

Implications:

School councils are public agencies and must comply with the Open Records Law. In this policy, the board may require the council to send copies of its minutes and other documents to the central office.

APPEAL OF SCHOOL COUNCIL DECISIONS - SECTION 3(i)

(i) A process for appealing a decision made by a school council.

Statutory Requirement:

⇒ Local school boards must have a process in place that allows individuals to appeal a council policy or decision.

Implications:

This policy should include information on who may appeal a decision, who will hear and decide the appeal, what types of decisions may be appealed, and the circumstances under which a council decision may be overturned. The standards for overturning a council decision may vary from district to district, but to be lawful, they should be clearly spelled out in policy. The council policy may not be overturned based on the school board's opinion of the educational merit of the policy.

ADDITIONAL AUTHORITY TO COUNCILS AND LIABILITY INSURANCE SECTION 4

In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

Statutory Requirement:

- ⇒ Local school boards may give additional authority to councils that is not given in the SBDM law.
- ⇒ Liability insurance must be provided for school council members by the school board.

Implications:

For example, although local boards may legally require a standard report card form that is consistent with all schools in the district, they could allow individual schools to develop their own report cards.

IMPLEMENTATION OF AND EXEMPTION FROM SBDM

SECTION 5

After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision-making shall do so. All schools shall implement school-based decision-making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

Statutory Requirement:

- ⇒ All schools have implemented SBDM by July 1, 1996, unless they are in a school district with only one school, or are performing above their school improvement goal for the current biennium and have received an exemption from the Kentucky Board of Education.
- ⇒ If a school is performing above its threshold level requirement, and upon a vote to do so by a majority of the faculty and a majority of at least twenty-five (25) voting parents, the school may apply to the Kentucky Board of Education for an exemption from the requirement for implementing SBDM for the current biennium.
- ⇒ The parents of students in the school must be notified that the vote for exemption from SBDM is to be conducted, and the voting process must be conducted by the parent-teacher organization of the school, or if no organization exists, a group of parents must be formed for the purpose of voting for exemption.
- ⇒ Under the statute, the Kentucky Board of Education will grant all exemptions requested by eligible schools.

Implications:

“Faculty” includes all certified staff assigned to the school, including part-time and itinerant certified staff. Parents do not have to be members of the PTA or PTO to vote. Schools must continue to exceed their threshold level requirements to continue to remain exempt for each successive biennium. An exempt school that meets or falls below its threshold level requirement for any biennium must implement SBDM in a timely manner.

Schools whose state assessment results show that they are above their threshold goal can apply for exemption from SBDM. To do that, a majority of the faculty and a majority of at least 25 voting parents must vote that they want an exemption and send their request to the Kentucky Department of Education.

The staff in the Kentucky Department of Education will put the request for exemption on the next available Kentucky Board of Education agenda. The exemption lasts until the schools’ assessment results for a biennium fall below their state performance goal. Schools that are below their goal for the biennium will have to form councils after notification of their scores. Eligibility for exemption is always based on the results of a full biennium, and an exemption lasts indefinitely as long as a school continues to exceed their threshold or until the school chooses to implement SBDM.

New schools created subsequent to July 1, 1996 are SBDM schools. As with any SBDM school, a council must be in place to fulfill all SBDM requirements including the responsibilities to provide consultation to the principal on any personnel decisions for vacancies, and to take action on the school’s budget to approve the purchase of instructional materials and supplies. For a more detailed description of the requirements for implementation or exemption, please see Program Review 95-SBDM-149.

Implications for School Formation, Consolidation and Closing:

For a school council to form and operate, there must be a school. As school boards make decisions about school closings, consolidations, or building new schools the issue of SBDM must be addressed. Each situation can be different, and the Kentucky Department of Education can help provide guidance for individual schools and districts.

For example, when schools are closing and/or consolidating into an existing school, the central office staff will need to help the school work out how the people involved in the process are going to have their SBDM elections. The superintendent will identify which principal and teachers will be assigned to the newly consolidated school, and which students will attend.

Then, the parent group can form based on which students will attend. Once the school has teachers assigned and students who will be attending, there can be parent and teacher elections.

PROFESSIONAL DEVELOPMENT ACTIVITIES PROVIDED

SECTION 6

The Department of Education shall provide professional development activities to assist schools in implementing school-based decision-making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. School council member training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. By November 1 of each year, the principal, through the local superintendent, shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected during a school year to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

Statutory Requirement:

- ⇒ School council members who are elected for the first time must complete six hours of training from an endorsed SBDM trainer.
- ⇒ School council members who have served for one year or more must complete three hours of SBDM training per year.
- ⇒ The training for school council members must include specific information on the principles of SBDM, authority of school council members, effective SBDM practices, assessment and accountability, and tools available for school councils.

Implications:

To effectively provide all Kentucky schools with high-quality professional development activities, the Department of Education has trained and endorsed providers to do SBDM training. The training is monitored by the Department of Education for quality and accuracy. An updated list of SBDM training providers is maintained on the Kentucky Department of Education web page at the *Training and Trainers* link:

<http://www.education.ky.gov/KDE/Administrative+Resources/School+Based+Decision+Making/Training/SBDM+Trainer+Information.htm>

ALTERNATIVE MODELS FOR SBDM SECTION 7

A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making including, but not limited to, a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the chief state school officer and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parent, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

Statutory Requirement:

⇒ The Kentucky Board of Education must approve all alternative models before they may be implemented.

Implications:

The Kentucky Board of Education established a regulation [701 KAR 5:100] and an application for schools that wish to apply for an alternative administrative structure. For example, the school council may choose an alternate chairperson for the council. This is a change in the administrative structure set in the statute and requires approval as an alternative model. Program Review 93-SBDM-124 specifically addresses this issue, as does the Attorney General's Opinion OAG 93-52.

The alternative model application process requires schools to involve administrators, teachers, parents, and students, and requires a two-thirds vote of the faculty to approve the model. Please

see <http://162.114.4.13/kar/701/005/100.htm> and <http://162.114.4.13/kar/701/005/080.htm> for the complete text of the regulations. Applications for alternative models are available for download from the Kentucky Department of Education web page at the *SBDM Technical Assistance Documents* link:

<http://www.education.ky.gov/KDE/Administrative+Resources/School+Based+Decision+Making/Technical+Assistance/SBDM+Technical+Assistance+Download+Documents.htm> and should be sent to the Commissioner of Education at the Kentucky Department of Education for processing.

STATE BOARD REGULATION TO ESTABLISH SCHOOL ALLOCATION: SECTION 8

The Kentucky Board of Education, upon recommendation of the chief state school officer, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095. Small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

Statutory Requirement:

- ⇒ School councils are appropriated at least 65 percent of the local district professional development funds allocated based on per pupil average daily attendance (ADA) figures for their school.
- ⇒ Compliance with requirements in KRS 156.095 is mandatory and requirements can be reviewed online at: <http://162.114.4.13/krs/156-00/095.pdf>

Implications

The Kentucky Board of Education developed a regulation [702 KAR 3:245] called the "School Council Allocation Formula" that establishes requirements by which school districts allocate funds to school councils. Funds include money for instructional materials, supplies, equipment, travel, classified and certified personnel, professional development and any additional funds allocated by the board.

Most districts keep all funds at the central office, use a voucher or purchase order system, and monthly financial reports to keep councils informed about the balance of funds.

**PENALTIES FOR CIRCUMVENTING SBDM
SECTION 9(a)**

No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

Statutory Requirement:

- ⇒ Board members, school council members, superintendents, principals, teachers, counselors, and any employees of the school district are prohibited from intentionally interfering with the rights of teachers, parents, and principals to be involved in making decisions for schools that help students accomplish the goals established in law [KRS 158.645 and 158.6451].
- ⇒ Councils cannot be interfered with or prevented from making decisions in areas of policy assigned to them in Section 2.

**PENALTIES FOR CIRCUMVENTING SBDM
SECTION 9(b)**

An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

Statutory Requirement:

⇒ Complaints under this section must be filed in writing with the Office of Education Accountability (OEA) (OEA web page: <http://162.114.4.13/oea/index.htm>).

Implications:

For a violation of this subsection to occur, there must be a pattern of practice that is detrimental to or circumvents the intent of school-based decision making. This means that a district employee or school council member must knowingly and intentionally do something that interferes with or circumvents the council's right to make decisions in the areas given to them by law, and that they must interfere with or circumvent the council more than once.

PENALTIES FOR CIRCUMVENTING SBDM SECTION 9(c)

The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

Statutory Requirement:

⇒ The Kentucky Board of Education will use the process for conducting a hearing established by KRS Chapter 13B (<http://www.lrc.ky.gov/KRS/013B00/CHAPTER.HTM>) when a complaint is referred to the Kentucky Board of Education from the Office of Education Accountability.

PENALTIES FOR CIRCUMVENTING SBDM SECTION 9(d)

If the State Board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

Statutory Requirement:

- ⇒ The first time someone is proven to have violated this section, they may be reprimanded by the Kentucky Board of Education.
- ⇒ A second violation of this section by a superintendent, school council member, or board member could be grounds for removal from office or grounds for dismissal of a school district employee for misconduct and willful neglect of duty.

SCHOOL COUNCIL AUTHORITY RESCINDED SECTION 10

Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346.

Statutory Requirement:

- ⇒ The school council authority may be rescinded or advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346 (Identification of School Council Needing Improvement statute: <http://www.lrc.ky.gov/KRS/160-00/346.PDF>).

SCHOOL WELLNESS POLICY AND ASSESSMENT TOOL SECTION 11

Each school council of a school containing grades K-5 or any combination thereof, or if there is no school council, the principal shall develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy choices among students. The policy may permit physical activity to be considered part of the instructional day, not to exceed thirty (30) minutes per day, or one hundred and fifty (150) minutes per week. Each school council, or if there is no school council, the principal, shall adopt an assessment tool to determine each child's level of physical activity on an annual basis. The council or

principal may utilize an existing assessment program. The Kentucky Department of Education shall make available a list of available resources to carry out the provisions of this subsection. The department shall report to the Legislative Research Commission no later than November 1 of each year on how the schools are providing physical activity under this subsection and on the types of physical activity being provided. The policy developed by the school council or principal shall comply with provisions required by federal law, state law, or local board policy.

Statutory Requirement:

- ⇒ School council policy must permit moderate to vigorous physical activity every day not to exceed 30 minutes per day or 150 minutes per week.
- ⇒ Time for this required physical activity is considered part of the school day for each student.
- ⇒ Students with disabilities must receive accommodations and adaptations to allow them to participate with other students at a level that is appropriate based on the goals in their individual education plan as determined by the Admissions and Release Committee at the school.
- ⇒ The school council must adopt an assessment tool that will be used to determine each child's level of physical activity on an annual basis, or they can approve a tool that is part of any existing school wellness program.

The school council may not see reports on individual students, but can ask for an annual report from the principal from all of the data that is gathered from the assessment tool. Data can be disaggregated for the council's consideration.

For further information on the School Wellness Policy and Assessment Tool, visit the KDE Nutrition and Health Services web page at
<http://www.education.ky.gov/NR/exeres/DCFBACB2-8014-476A-AB7F-AA34570BF1BF.htm>

INTRODUCTION—KRS 160.346

This chapter contains the text of the current School Council Needing Improvement statute, KRS 160.346. The actual text of the law is located in the gray blocks throughout the Chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and

followed by implications. **A full copy of the statute is available online at <http://www.lrc.ky.gov/krs/160%2D00/346.pdf>**. Further information on how the law can be implemented is included in specific chapters throughout the manual.

IDENTIFICATION OF SCHOOL COUNCIL NEEDING IMPROVEMENT

SECTION 1(a)

A school with a school council identified as needing improvement under KRS 158.6455 shall include in its school improvement plan actions to strengthen the school council and the school-based decision making process at the school.

Statutory Requirement:

⇒ A school council identified as needing improvement during a scholastic audit must include activities to strengthen the school council and the school-based decision making process in the school improvement plan.

SCHOOL DISTRICT ASSISTANCE PLAN

SECTION 1(b)

The local school district shall include its assistance plan for a school identified in paragraph (a) of this subsection actions to strengthen the functioning of the school council and the school-based decision-making process at the school.

Statutory Requirement:

⇒ The district must form an assistance plan to help the school in need of improving its school council and school-based decision-making process.

SCHOLASTIC AUDIT TEAM REVIEWS

SECTION 2(a)

A scholastic audit team, established under KRS 158.6455, auditing a school a second time that for two (2) or more successive accountability cycles failed to meet its goal, shall include in the review:

1. The functioning of the school and the school council;

2. The implementation of the school improvement plan and actions related to the school council developed under subsection (1) (a) of this section;
3. The interaction and relationship between the superintendent, central office personnel, and the council; and
4. A recommendation to the commissioner of education in the audit report concerning whether the school council should retain the authority granted to it under KRS 160.345. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:
 - a. The authority should be transferred to the superintendent or a highly skilled educator; and
 - b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (6) of this section.

Statutory Requirement:

⇒ A scholastic audit team, auditing a school for a second time that has not met its goal for two accountability cycles, must include all of the information in the statute in the audit report.

SCHOLASTIC AUDIT TEAM REVIEWS
SECTION 2(b)

A scholastic audit team, established under KRS 158.6455, auditing a district of a school subject to subsection (2)(a) of this section, shall include in its review:

1. The overall functioning of the school district;
2. The interaction and relationship between the superintendent, central office personnel, school board members, and the council; and
3. The implementation of the district assistance plan for the audited school. In the audit report, the team shall make a recommendation to the commissioner of education concerning whether the school's council should retain its authority granted under KRS 160.345. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:
 - a. The authority should be transferred to the superintendent or a highly skilled educator; and
 - b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (6) of this section.

Statutory Requirement:

⇒ A scholastic audit team, auditing the district of a school that has not met its goal for two accountability cycles, must include all of the information in the statute in the audit report.

SCHOLASTIC AUDIT TEAM REVIEWS

SECTION 3(a)1

If both the school and the district audit teams recommend transfer of the council's authority to the superintendent, the commissioner of education shall transfer the council's authority under KRS 160.345 to the superintendent. The commissioner shall determine whether the school council shall continue an advisory capacity and shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the action.

Statutory Requirement:

⇒ If both audit teams recommend transfer of the council's authority, the commissioner of education must transfer that authority granted under KRS 160.345.

⇒ The commissioner must determine whether the school council will act in an advisory capacity.

⇒ The commissioner must notify the local board of education, the district superintendent, the principal of the school, and the school council members of the decision.

SCHOLASTIC AUDIT TEAM REVIEWS

SECTION 3(a)2

Within thirty (30) days of the commissioner's action, the school council may request that the Kentucky Board of Education consider the matter by submitting a written request including any supporting information. The Kentucky Board of Education shall consider the audit reports, the

commissioner's decision, and the request for consideration with any supporting information, and make a final determination.

Statutory Requirement:

- ⇒ Within thirty (30) days of the commissioner's action, the school council may request reconsideration by the Kentucky Board of Education in writing.
- ⇒ The Kentucky Board of Education must consider the audit reports, the commissioner's decision, and the request for consideration with any supporting information.
- ⇒ The decision of the Kentucky Board of Education is final.

**SCHOLASTIC AUDIT TEAM REVIEWS
SECTION 3(b)**

If both audit teams recommend transfer of the council's authority to a highly skilled educator or if both recommend transfer of the council's authority but are not in agreement as to the party to be granted authority, the commissioner shall make a recommendation to the Kentucky Board of Education, which shall make the final determination. The school council and the superintendent may submit supporting information. The commissioner shall include as part of the recommendation whether the school council shall continue in an advisory capacity. The Kentucky Board of Education shall consider the audit reports, the commissioner's recommendation, and supporting information provided by the school council and superintendent. The commissioner shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the recommendation and the Kentucky Board of Education's final action.

Statutory Requirement:

- ⇒ If both audit teams recommend transfer of the council's authority, the commissioner must make a recommendation to the Kentucky Board of Education, and they must make the final determination.
- ⇒ The school council and the superintendent may submit supporting information to the Kentucky Board of Education for consideration.
- ⇒ The commissioner must include as part of the recommendation whether the school council will continue to act in an advisory capacity.
- ⇒ The Kentucky Board of Education must consider the audit reports, the commissioner's recommendation, and supporting information provided by the school council and superintendent.
- ⇒ The commissioner must notify the local board of education, the district superintendent, the principal of the school, and the school council members of the recommendation and the Kentucky Board of Education's final action.

SCHOLASTIC AUDIT TEAM REVIEWS

SECTION 3(c)

If the two (2) audit teams disagree in their recommendations about whether the council's authority should be transferred, the school council shall retain its authority.

Statutory Requirement:

- ⇒ The council will retain its authority if both audit teams are not in agreement as to who should be granted authority.

TRANSFER OF COUNCIL'S AUTHORITY

SECTION 4

Subject to the policies adopted for the district by the local board of education, the local district superintendent or the highly skilled educator shall assume all powers, duties, and authority granted to a school council under KRS 160.345 thirty (30) days following the commissioner's recommendation if no request for consideration by the Kentucky Board of Education is

submitted or following the final determination of the Kentucky Board of Education, whichever is appropriate.

Statutory Requirement:

⇒ Following local board policy, the superintendent or highly skilled educator must assume all powers, duties, and authority granted under the law thirty (30) days following the commissioner's recommendation, if no request for consideration by the Kentucky Board of Education is submitted, or thirty (30) days following the final determination of the Kentucky Board of Education, whichever is applicable.

Implications:

The superintendent or highly skilled educator must assume all previously performed council duties thirty days following the commissioner's recommendation. However, if a request for consideration by the Kentucky Board of Education is submitted during that time, the superintendent or highly skilled educator would not assume council duties until a final determination has been made.

**TRANSFER OF COUNCIL'S AUTHORITY
SECTION 5**

Within thirty (30) days after assuming the powers, duties, and authority under subsection (4) of this section, the superintendent or highly skilled educator shall consult with the council, if the council has been given an advisory role under subsection (3) of this section, and with stakeholders at the school including parents, the principal, certified staff, and classified staff, and prepare a plan for developing capacity for sound school-based decision making at the school. The commissioner of education shall review the plan and approve it or identify specific areas for improvement. The superintendent or highly skilled educator shall report to the commissioner every six (6) months on the implementation and results of the approved plan.

Statutory Requirement:

⇒ If the council has been given an advisory role under subsection 3, the superintendent or highly skilled educator must consult with the council within thirty (30) days of assuming the powers, duties, and authority under subsection 4.

- ⇒ With the inclusion of all stakeholders including parents, the principal, certified staff, and classified staff, a plan must be prepared for developing sound school-based decision making at the school.
- ⇒ The commissioner must review the plan and approve it or identify specific areas for improvement.
- ⇒ The superintendent or highly skilled educator shall report to the commissioner every six (6) months on the implementation and results of the approved plan.

RESTORATION OF COUNCIL'S AUTHORITY

SECTION 6

The school's right to establish a council or the school's right for the council to assume the full authority granted under KRS 160.345 shall be restored when the school meets its goal for an accountability cycle as determined by the Kentucky Department of Education under KRS 158.6455.

Statutory Requirement:

- ⇒ When the school meets its goal for an accountability cycle, as determined by the Kentucky Department of Education, the school council's authority must be restored.

SECTION 9 VIOLATION REPORTING

SECTION 7

If, in the course of a school or district scholastic audit, the audit team identifies information suggesting that a violation of KRS 160.345 (9)(a) may have occurred, the commissioner of education shall forward the evidence to the Office of Education Accountability for investigation.

Statutory Requirement:

- ⇒ If the scholastic audit team identifies information suggesting a Section 9 violation (an intentional pattern of SBDM interference) has occurred, the commissioner of education must forward the evidence to the Office of Education Accountability for investigation.

INTRODUCTION—KRS 160.347

This chapter contains the text of the current Removal of School Council Members statute, KRS 160.347. The actual text of the law is located in the gray blocks throughout the Chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and followed by implications. **A full copy of the statute is available online at <http://www.lrc.ky.gov/krs/160%2D00/347.pdf>**. Further information on how the law can be implemented is included in specific chapters throughout the manual.

REMOVAL OF SCHOOL COUNCIL MEMBERS

A member of a school council may be removed from the council for cause, after an opportunity for hearing before the local board, by a vote of four-fifths (4/5) of the membership of a board of education after the recommendation of the chief state school officer pursuant to KRS 156.132. Written notices setting out the charges for removal shall be spread on the minutes of the board and given to the member of the school council.

Statutory Requirement:

- ⇒ There must be cause to remove a school council member, which should be presented to the local board of education.
 - ⇒ The school council member must receive a hearing before the local board of education.
 - ⇒ If four-fifths (4/5) of the membership of the local board of education votes to remove the school council member, the case is forwarded to the commissioner of education for final action.
 - ⇒ The school council member must receive written notices of all proceedings, and must be able to see any evidence that is presented.
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INTRODUCTION—160.348

This chapter contains the text of the current Advanced Placement statute, KRS 160.348. The actual text of the law is located in the gray blocks throughout the Chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and followed by

implications. **A full copy of the statute is available online at** <http://www.lrc.ky.gov/krs/160%2D00/348.pdf>. Further information on how the law can be implemented is included in specific chapters throughout the manual.

COUNCIL POLICY FOR HIGH SCHOOLS ON ADVANCED PLACEMENT, INTERNATIONAL BACCALAUREATE, DUAL ENROLLMENT, AND DUAL CREDIT COURSES

SECTION 1

Beginning with the 2003-2004 school year and thereafter, each secondary school-based decision making council shall offer a core curriculum of advanced placement, International Baccalaureate, dual enrollment, or dual credit courses, using either or both on-site instruction or electronic instruction through the Kentucky Virtual High School or other on-line alternatives. In addition, each school-based decision making council shall comply with any additional requirements for advanced placement, International Baccalaureate, dual enrollment, and dual credit courses that may be established cooperatively by the Kentucky Department of Education, the Education Professional Standards Board, and the Council on Postsecondary Education in accordance with the definitions in KRS 158.007.

Statutory Requirement:

- ⇒ Every high school must offer advanced placement, International Baccalaureate, dual enrollment, or dual credit courses either on-site or on-line.
- ⇒ Councils must also comply with any additional requirements for advanced placement, International Baccalaureate, dual enrollment, or dual credit that may be established by the Kentucky Department of Education, the Education Professional Standards Board, and the Council on Postsecondary Education.

COUNCIL POLICY FOR HIGH SCHOOLS ON ADVANCED PLACEMENT, INTERNATIONAL BACCALAUREATE, DUAL ENROLLMENT, AND DUAL CREDIT COURSES

SECTION 2

Each secondary school-based decision making council shall establish a policy on the recruitment and assignment of students to advanced placement, International Baccalaureate,

dual enrollment, and dual credit courses that recognizes that all students have the right to be academically challenged and should be encouraged to participate in these courses.

Statutory Requirement:

- ⇒ Each high school must have a policy on recruiting and assigning students to advanced placement, International Baccalaureate, dual enrollment, and dual credit courses.
 - ⇒ The council policy must recognize that all students have the right to and should be encouraged to participate in advanced placement, International Baccalaureate, dual enrollment, and dual credit courses.
 - ⇒ KDE recommends a policy sample that can be downloaded from the Kentucky Association of School Councils at <http://www.kasc.net/downloads/APpolicy.pdf>
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INTRODUCTION—158.649

This chapter contains the text of the current Achievement Gap statute, KRS 158.649. The actual text of the law is located in the gray blocks throughout the Chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and followed by implications. **A full copy of the statute is available online at** <http://www.lrc.ky.gov/KRS/158-00/649.PDF>. Further information on how the law can be implemented is included in specific chapters throughout the manual.

DEFINITION OF ACHIEVEMENT GAP – SECTION 1

"Achievement gap" means a substantive performance difference on each of the tested areas by grade level of the Commonwealth Accountability Testing System between the various groups of students including male and female students, students with and without disabilities, students with and without English proficiency, minority and nonminority students, and students who are eligible for free and reduced lunch and those who are not eligible for free and reduced lunch.

Statutory Requirement:

- ⇒ An achievement gap exists if there is a substantive difference within accountability scores of the various targeted groups of students mentioned.
- ⇒ Targeted groups include male and female students, students with and without disabilities, students with and without English proficiency, minority and non-minority students, and students who are eligible and those who do not qualify for free and reduced lunch.

REPORTING OF STUDENT PERFORMANCE DATA – SECTION 2

By November 1 of each year, the Department of Education shall provide each school council, or the principal if a school council does not exist, data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, English proficiency, and participation in the federal free and reduced price lunch program. The information from the department shall include an equity analysis that shall identify the substantive differences among the various groups of students identified in subsection (1) of this section.

Statutory Requirement:

- ⇒ The Department of Education must provide schools and school districts student performance data on the targeted groups by November 1 of each year. This data must be based on the Commonwealth Accountability Testing System.
- ⇒ The data will include performance data on all disaggregated groups mentioned in Section 1 of this statute.

POLICY FOR REVIEWING STUDENT ACADEMIC PERFORMANCE – SECTION 3

By December 1, 2002, each local board of education upon the recommendation of the local district superintendent shall adopt a policy for reviewing the academic performance on the state assessments required under KRS 158.6453 for various groups of students, including major racial groups, gender, disability, free and reduced price school lunch eligibility, and limited English proficiency. The local board policy shall be consistent with Kentucky Board of Education administrative regulations. Upon agreement of the school-based decision making council, or the principal if there is not a council, and the superintendent, the local board shall

establish a biennial target for each school for reducing identified gaps in achievement as set out in subsection (4) of this section.

Statutory Requirement:

- ⇒ Each local board of education must adopt a district policy for reviewing student performance on the state assessments. This review must include information on all applicable targeted groups.
- ⇒ The school council and the superintendent must set biennial targets for their school reducing any identified gap. The local board of education must agree with these targets.

SETTING BIENNIAL TARGETS – SECTION 4

By February 1, 2003, and each February 1 in odd-numbered years thereafter, the school-based decision making council, or the principal if there is not a council, with the involvement of parents, faculty, and staff shall set the school's biennial targets for eliminating any achievement gap and submit them to the superintendent for consideration. The superintendent and the school-based decision making council, or the principal if there is not a council, shall agree on the biennial targets before they are submitted to the local board of education for adoption.

Statutory Requirement:

- ⇒ Consulting with all stakeholders (parents, certified and classified staff) the school council must set biennial targets for eliminating any achievement gap.
- ⇒ The superintendent and school council must agree on the biennial targets before they are submitted to the local board for adoption

Implications:

The school council and superintendent must agree on biennial targets for any achievement gap, however school councils are not required to include targets for each subpopulation in their improvement plans. Councils may decide, based on their needs assessment, which subpopulation(s) to address. For more information, please visit <http://www.education.ky.gov/KDE/Administrative+Resources/Commissioner+of+Education/Messages+to+Superintendents/20040114+Requirements+for+Achievement+Gap+Legislation+SB+168.htm>

For additional support and assistance with achievement gaps see <http://www.education.ky.gov/KDE/Instructional+Resources/Closing+the+Gap/Achievement+Gap+Coordinators/default.htm>

REVISING SCHOOL IMPROVEMENT PLAN – SECTION 5

By April 1, 2003, and each April 1 in odd-numbered years thereafter, the school council, or the principal if a school council does not exist, with the involvement of parents, faculty, and staff, shall review the data and revise the consolidated plan to include the biennial targets, strategies, activities, and a time schedule calculated to eliminate the achievement gap among various groups of students to the extent it may exist. The plan shall include but not be limited to activities designed to address the following areas:

- (a) Curriculum alignment within the school and with schools that send or receive the school's students;
- (b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
- (c) Professional development to address the goals of the plan;
- (d) Parental communication and involvement;
- (e) Attendance improvement and dropout prevention; and
- (f) Technical assistance that will be accessed.

Statutory Requirement:

- ⇒ The school council must review data and include biennial targets, activities, and a calculated time schedule in their school improvement plan for eliminating achievement gaps in various targeted groups.
- ⇒ The plan must address the areas mentioned in this section of the statute.

Implications:

After completing a needs assessment, the council must include specific activities and timelines for eliminating their achievement gaps in their school improvement plan. Activities should be measurable, and specific completion dates should be included.

PUBLIC MEETING – SECTION 6

The principal shall convene a public meeting at the school to present and discuss the plan prior to submitting it to the superintendent and the local board of education for review, in the public meeting required under KRS 160.340

Statutory Requirement:

- ⇒ The principal must call a public meeting at the school to present and discuss the plan with stakeholders before submitting it to the superintendent and local board.

LOCAL BOARD DETERMINATION – SECTION 7

Based on the disaggregated biennial assessment results, the local board shall determine if each school achieved its biennial targets for each group of students. Only data for a group of students including ten (10) or more students shall be considered.

Statutory Requirement:

- ⇒ The local board of education must determine if the school has achieved its biennial target for each identified group.
- ⇒ Only groups of ten (10) or more students will be considered.

LOCAL BOARD DETERMINATION – SECTION 8

Notwithstanding KRS 160.345(8) and 158.070(8), if a local board determines that a school has not met its biennial target to reduce the identified gap in student achievement for a group of students, the local board shall require the council, or the principal if no council exists, to submit its revisions to the consolidated plan describing the use of professional development funds and funds allocated for continuing education to reduce the school's achievement gap for review and approval by the superintendent. The plan shall address how the school will meet the academic needs of the students in the various groups identified in subsection (1) of this section.

Statutory Requirement:

- ⇒ If the local board of education deems that the school improvement plan does not meet the biennial target for reduction in achievement gaps, the local board must require the school council to submit revisions of the school improvement plan.
- ⇒ The plan revision must include a description of the use of professional development funds, funds allocated for continuing allocation, and how the academic needs of the various groups identified in Section 1 will be met.
- ⇒ The superintendent must approve the school improvement plan.

SUPERINTENDENT REPORTING – SECTION 9

The superintendent shall report to the commissioner of education if a school fails to meet its targets to reduce the gap in student achievement for any student group for two (2) successive biennia. The school's consolidated plan shall be subject to review and approval by the Kentucky Department of Education and the school shall submit an annual status report. The Department of Education may provide assistance to schools, as it deems necessary to assist the school in meeting its goals.

Statutory Requirement:

- ⇒ The superintendent must report to the commissioner of education any school that fails to meet set achievement gap targets for two (2) consecutive biennia.
- ⇒ The school's improvement plan will be subject to review by the Kentucky Department of Education with the school submitting annual status reports.
- ⇒ The Kentucky Department of Education may provide assistance to schools as needed to assist in meeting goals.

REQUIREMENTS IF BIENNIAL TARGETS MET – SECTION 10

The school-based decision making council, or the principal if there is not a council, shall no longer be required to seek approval of the plan under subsections (8) and (9) of this section when it meets its biennial target for reducing the gap in student achievement for the various groups of students identified in subsection (1) of this section.

Statutory Requirement:

- ⇒ Once the school meets its biennial targets, the school council will no longer be required to seek approval of its school improvement plan.

INTRODUCTION—158.181

This chapter contains the text of the current Legislative Findings on Free Speech and Religious Liberty Rights statute, KRS 158.649. The actual text of the law is located in the gray blocks throughout the Chapter, divided and briefly explained section by section. Statutory requirements are preceded by arrows and followed by implications. **A full copy of the statute is available online at** <http://www.lrc.ky.gov/KRS/158-00/181.PDF>. Further information on how the law can be implemented is included in specific chapters throughout the manual.

GENERAL ASSEMBLY FINDINGS ON RELIGIOUS LIBERTY AND FREE SPEECH – SECTION 1

(1) The General Assembly finds the following:

- (a) Judicial decisions concerning religion, free speech, and public education are widely misunderstood and misapplied;
- (b) Confusion surrounding these decisions has caused some to be less accommodating of the religious liberty and free speech rights of students than permitted under the First Amendment to the United States Constitution;
- (c) Confusion surrounding these decisions has resulted in needless conflicts and litigation;
- (d) The Supreme Court of the United States has ruled that the establishment clause of the First Amendment to the United States Constitution requires that public schools neither advance or inhibit religion. Public schools should be neutral in matters of faith and should treat religion with fairness and respect;
- (e) Neutrality to religion does not require hostility to religion. The establishment clause does not prohibit reasonable accommodation of religion, nor does the clause prohibit appropriate teaching about religion;
- (f) Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment to the United States Constitution; and
- (g) Setting forth the religious liberty rights of students in a statute would assist students and parents in the enforcement of the religious liberty rights of students and would provide impetus to efforts in public schools to accommodate religious belief in feasible cases.

Statutory Requirement:

- ⇒ Public schools are to neither advance or inhibit religion, but should be neutral and treat all faith and religion with respect.
- ⇒ Neutrality does not mean public schools cannot reasonably accommodate religion nor appropriately teach about religion in certain contexts.

CREATING A SAFE HARBOR FOR SCHOOLS – SECTION 2

The purpose of KRS 158.181 to 158.187 is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of students to the extent permissible under the establishment clause.

Statutory Requirement:

⇒ Schools must provide a safe harbor for students and allow for free speech and religious liberty rights under the establishment clause in order to avoid litigation.

ATTORNEY GENERAL'S OPINIONS ON SCHOOL-BASED DECISION MAKING

Attorney General's Opinions concerning SBDM may be used in training to clarify issues and answer questions. Opinions of the Attorney General do not have the force of law, except for those opinions that decide issues under the Open Meetings Act or the Open Records Act. School districts and school councils who abide by Attorney General's Opinions are considered under the law to have acted in good faith. In order to understand the issues in context, council members and others may wish to read the entire opinion. Attorney General's Opinions are available on for online review at: <http://ag.ky.gov/civil/opinions.html>. Search for opinions impacting school-based decision making by entering keywords "school-based decision making" or "SBDM".

For complete copies of these opinions, you may write to the Attorney General's Office and request the opinions by number:

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